

# **DHFS and Wisconsin Indian Tribes 2006 Consultation Implementation Plan**

## **I. Introduction:**

This plan is the result of the first annual consultation between elected representatives of the eleven sovereign federally-recognized Indian tribes in Wisconsin and the Wisconsin Department of Health and Family Services (DHFS) administration. It contains mutually agreed upon issues and strategies to achieve better outcomes over the next twelve months and to develop a systematic approach to providing quality health and human services in Wisconsin tribal communities.

To accomplish these goals, key DHFS and tribal staff or representatives will form workgroups to further the priorities in this plan. DHFS and tribes agree to provide staff and other expertise as needed to achieve successful collaboration on these issues.

Each division within DHFS shall inform the DHFS Tribal Affairs Office of the progress or delays encountered in successfully addressing these issues. This information will then be compiled into a single report, which will be presented for review at the next annual DHFS-Tribal Consultation Meeting.

## **II. Issue areas**

### ***A ) Intergovernmental Relations***

#### **Issue 1: Working Relationships**

Healthy working relationships and collaboration are important to fostering improved health care and social services in tribal communities. Improved working relationships between tribes and counties, and tribes and DHFS, will be pursued via processes to create collaboration, synergy, and alignment of effort.

The state/county/tribal relationship is complex. Tribes, counties, and the state each have a responsibility to tribal residents. Concerns and confusion often arise when state/tribal/county services, authority, and responsibilities seemingly overlap. Clear lines of open communication are necessary to create mutually beneficial working environments.

#### **Actions:**

- DHFS and tribes will meet in consultation meetings as necessary to address identified issues.
- DHFS will provide tribal and county governments training and technical assistance, as necessary, to support the implementation of DHFS funded programs in tribal communities.

- DHFS will collaborate with tribal program staff to provide the necessary assistance to county governments, enabling county staff to provide culturally appropriate services. Assistance to the county may be in the form of invitations to conference workshops, training sessions or facilitated meetings.
- Joint DHFS/tribal workgroups will be established to work collaboratively on issues defined in the annual plan.
- DHFS employee training curricula will be developed emphasizing the government-to-government relationships between the tribes and the state, the tribes and the counties, and the counties and the state. The core curricula for the DHFS New Employee Orientation, the Supervisor's Development Program, and the two one-day seminars each year will include an overview of Wisconsin Indian Tribes, tribal sovereignty, and the DHFS Policy Regarding Consultation with Wisconsin's Indian Tribes. In addition, the two one-day seminars will focus on specific topics informing department employees of tribal health and human service delivery systems while promoting department and tribal staff discussion of relevant issues.
- DHFS and Tribes will seek out and utilize existing and new venues to cross-train on each others' interests, capacity and concerns, e.g. WCA magazine, Great Lakes Inter-Tribal Council (GLITC) information materials, tribal newspapers, etc.
- DHFS and tribes will work to conduct better data analysis and assessment of tribal needs, possibly with the assistance of DHFS and GLITC epidemiologists.
  - One such area of improved data analysis shall be increasing the accuracy of racial classification in all health data.

## ***B ) Resource Allocation***

### **Issue 1: Collaboration in Budget Planning**

Tribes have not been as closely partnered in DHFS biennial budget development as possible and, therefore, opportunities may be lost for pursuing resources or collaboration.

#### **Actions:**

- Better coordination between DHFS and Tribes in the 2007-09 budget development, including statutory changes. DHFS will assist tribes in understanding the state proposals for budget process and deadlines so there is a good and timely process for expressing needs. It is agreed:
  - Tribes will provide their 2007-09 biennial budget input to DHFS no later than May 15, 2006. This date will allow DHFS to fit tribal needs within the timeframe for the Department's budget development process. DHFS and tribal staff can meet before and/or after submission of the tribal priorities to discuss them further.
- Tribes will be involved in discussions and planning concerning Medicaid reform in Wisconsin.

### **Issue 2: Direct Funding to Tribes**

The DHFS oversees multiple health and human service programs. Many of these programs are administered by county agencies. Tribal community members often do not

access these county services for various reasons. Tribal governments may provide some of these services through state and federal contracts or tribal funds but often lack the resources to provide all of the necessary services in their communities.

Also, fiscal misunderstandings exist, such as the belief on the part of non-tribal entities that tribes receive full funding for their health care centers and social service agencies from the federal government and/or gaming revenue.

**Actions:**

- Identify areas with flexibility to allocate state funding directly to tribes, where possible, appropriate, and mutually acceptable.
  - Review funding streams to counties and tribes.
  - Analyze the constraints of federal funding to determine the flexibility of providing allocations to tribal governments as well as county governments.
  - Explore the viability of creating a Tribal Area Administration on Aging.
  - Seek options to provide direct funding to tribes in the area of mental health and substance abuse services.
  - Maintain a dialogue around issues such as Title IV-E funding directly from the federal government to tribes or from the Department to tribes.
  - Maximize the use of Medical Assistance funding (see MA section).
  - Tribes may approach the Department and the Wisconsin Legislature to request increases in direct funding.
- DHFS will meet with the Menominee Tribe to explore the possibility of the tribe providing LTC waiver programs to the Menominee Tribe's members.
- DHFS will continue to meet with tribal Aging Directors to identify and address aging issues in tribal communities, including funding issues.
- Examine grants that use formula-driven allocations to ensure formulas utilize up-to-date and appropriate information.

**Issue 3: Conflict Resolution**

The complexity of funding guidelines and requirements, coupled with complex intergovernmental relationships, increases the chances that confusion and disagreements will occasionally arise. There must be a means to address areas of conflict when they arise.

**Actions:**

- Strengthen state/tribal/county collaboration and improve mechanisms for conflict resolution.
- Create a state/tribal/county collaboration/forum to discuss and resolve these kinds of issues on a regular basis.
- DHFS will provide mediation/leadership, as requested, on tribal-county fiscal issues.

## ***C ) Health Care Funding***

### **Issue 1: MA Flat-Rate Option for Tribal Health Clinics**

The Great Lakes Inter-Tribal Council Finance Workgroup requested DHFS to consider expanding methods for Medical Assistance (MA) reimbursement by tribal clinics. In particular, some tribes are interested in having the option of choosing an alternative flat-rate instead of the current retrospective cost-based reimbursement.

The State of Minnesota currently provides the flat-rate reimbursement and can be used as a source of information.

#### **Actions:**

DFHS is committed to researching the request to determine whether such a change would be feasible in Wisconsin and beneficial in tribal communities. In this process, DHFS will explore the following questions:

- Is it feasible for DHFS to support making such a change?
- What do tribes or DHFS need to do to elect to change methodologies?
- If tribes decide to take the flat rate (\$216), can they change back to receiving the retro rate?
- Can Wisconsin tribes apply for Medicaid Administrative Match?
- Would the prohibition against unbundling of charges apply to flat rate reimbursement?
- Does an Indian Health Service (IHS) encounter/visit mean a face-to-face encounter/visit between recipient and any health professional at an IHS clinic?
- Can “pharmacy encounters” provided to MA recipients be paid at the applicable IHS encounter/visit rate? (\$216/visit)

Based on the outcome of DHFS research, and if it is needed, a work group consisting of representatives from DHFS/Division of Health Care Financing (DHCF) staff, the GLITC Finance Committee, and a Federally Qualified Health Center (FQHC) Auditor will be convened to review the costs and benefits to tribal communities.

### **Issue 2: Other MA Claims**

Tribes that provide health and human services are not reimbursed for some MA-covered services, such as case management.

#### **Actions:**

- Establish a work group of tribal representatives and DHFS/DHCF representatives to identify services for which Medicaid reimbursement could be claimed and the process that a tribe could follow to obtain Medicaid reimbursement.

### **Issue 3: Create a strategy to increase funding for mental health and alcohol and other drug abuse (AODA) services for tribes.**

Many federal funding sources that are available to help states and local governments address mental health issues and AODA have barriers that prevent use by tribes. Mental health and AODA services are under-funded in tribal communities. Access to care is also

a problem in rural communities, and tribes are not being reimbursed from any federal or state funding source for a number of innovative and effective therapy alternatives to in-patient treatment. Sixty of Wisconsin's 72 counties are designated as psychiatric professional resource shortage areas.

**Actions:**

The DHFS and tribes will collaborate to pursue a strategy that would draw more federal funding into the state and tribal communities with the goal of providing greater access to effective mental health and AODA services. A group will be assembled to develop strategies that:

- Identify possible funding sources.
- Maximize access to federal funding for mental health and substance abuse services.
- Develop mental health community support programs, comprehensive community services, and crisis intervention services using tribal funds to match federal Medicaid funds.
- Access telemedicine.
- Identify the capacity for smaller tribes to access funding by joining together to qualify for funding sources such as federal grants.
- Combine funding sources to reduce fragmentation.
- Include ways to take care of youth with mental health and substance abuse problems in the community. This is especially critical for those youth who are now sent out of state to residential treatment facilities.

**Issue 4: Pro-rating tribal per capita payments makes some tribal elders ineligible for MA and other programs even though the per capita payment is not enough to cover food or health care for an entire year**

**Actions:**

- DHFS will research this issue and determine whether exceptions can be made to eligibility requirements.

***D ) Indian Child Welfare***

**Issue 1: ICWA Training**

County and State child welfare workers need to fully understand, recognize, and respect tribal governments' sovereign right to adopt their own child welfare codes in accordance with tribal customs. While many tribes have adopted all or part of Chapter 48, some have not and differences do exist. Since DHFS is the oversight agency for all county child welfare departments in Wisconsin, DHFS and Wisconsin Indian Tribes should collaborate to help create a curriculum and educate child welfare managers, supervisors, and caseworkers throughout Wisconsin about the Indian Child Welfare Act (ICWA) and Wisconsin Indian culture.

**Actions:**

- Development and provision of training that teaches:

1. The Indian Child Welfare Act
  2. Tribal Codes & Ordinances
  3. Cultural Issues
- Development of training curricula may take place in conjunction with current bi-monthly ICW Coordination Group meetings between DHFS and tribal staff. Subcommittee members, perhaps including county and Training Partnership staff, may be recruited to complete this task by June 30, 2006.
  - Once curricula are developed, tribes will provide training specific to their individual culture and laws to county child welfare agencies bordering their reservations. This will include training for county and private agencies regarding policies and procedures specific to individual tribes in their service areas.
  - Work with the UW System to develop and implement an ICWA requirement for social work students.

### **Issue 2: Incorporate ICWA into Wisconsin Statutes**

At the present time, Chapter 48, Stats., (the Children's Code) only references the Indian Child Welfare Act, rather than actually including the provisions of that Act. Because of this, caseworkers, judges, and attorneys oftentimes overlook ICWA requirements and forget that the federal ICWA legislation takes precedence over Wisconsin state law. In response to this problem, the DHFS has developed an analysis of a possible statutory language package to insert ICWA into Chs. 48 and 938 (the Juvenile Justice Code) wherever appropriate.

#### **Actions:**

- The Department has proposed the inclusion of ICWA into state statutes to the Legislature. If the Legislature does not act on this recommendation in the current legislative session, a workgroup will be established with an anticipated date of completion of October 31, 2006 for introduction in the 2007-08 legislative session.

### **Issue 3: Provide direct Title IV-E funding to tribes.**

At present time, federal IV-E funding is provided to the DHFS, which in turn provides those dollars to counties as part of the Community Aids allocation and through the IV-E Incentive Funds Program. There is no federal or state provision for direct IV-E funding to tribes. For counties to make payments for children placed in out-of-home care by tribal courts, tribes and counties must enter into 161 Agreements, a requirement that has caused complications in the past and currently. Congress is considering direct IV-E funding to tribes, but there is no certainty that this will be enacted and there are other concerns related to the legislation. Wisconsin tribes are very interested in learning more about what is needed to receive direct IV-E funding from either the federal or state government and what added responsibilities and costs would be attached to receiving it.

Preliminary discussion has taken place among members of the Legislature's Special Committee on State-Tribal Relations. It has generally been agreed that a study committee may be convened to review the questions below and report back to Committee members.

**Actions:**

- Legislative Council staff attorneys, DHFS, and tribal designees will examine the impact of direct Title IV-E funding to tribes. This study should address how direct federal funding would affect current 161 Agreements between counties and tribes.
- Legislative Council staff attorneys, DHFS, and tribal designees will examine the impact if DHFS were to provide direct Title IV-E funding to tribes.
- This study will also research how other states with county-based systems operate.

**Issue 4: The scope of 161 Agreements is too narrow.**

The 161 Agreement was created to be a means by which counties and tribes could come to agreement about how payment would be made for children placed in out-of-home care by the tribal court. However, as tribal child welfare agencies grew and began taking on more child welfare service-related duties, it became clear that there are other “process” issues of day-to-day business that need to be outlined between counties and tribes as well.

**Actions:**

Members of DHFS and tribal ICW programs will discuss what content is needed in future agreements between counties and tribes, including governmental limitations and responsibilities, statutory changes required, and ICWA requirements. Discussion will take place at the Department and Tribal bi-monthly ICW Coordination Group meetings and will include the following:

- Discuss establishing a problem resolution process when 161 Agreements are not followed.
- Discuss establishing sanctions for ICWA violations.
- DHFS, tribes, and counties will develop measurable outcomes for 161 Agreements, including timelines.
- Consider replacing the 161 Agreement with a more comprehensive County/Tribal or State/Tribal Agreement.

**Issue 5: Budget Constraints**

Tight budget times have led to limited county resources available to pay for out-of-home placements. This has caused friction between some tribes and counties over the past few years.

**Actions:**

- DHFS staff will analyze options for creating a high-cost or high-volume case fund to assist in payment for tribal court ordered out-of-home placements.

**Issue 6: Increased Quality Foster Care Resources for Tribes**

There are issues related to some county and private child placing agencies giving full faith and credit to foster homes licensed by tribal child welfare agencies. In addition, extended family members who care for Indian foster children may receive a lower “relative” Kinship Care rate instead of the higher foster care rate.

**Actions:**

- Ensure that county and state agencies extend full faith and credit to the tribal foster care licensing process. This can be done through one or more of the following:
  - A Division of Children and Family Services Numbered Memo.
  - Training on ICWA regarding tribal foster care licensing.
  - Training on the Indian Child Protection and Family Violence Act.
  - Reviewing other federal laws that may support or impede full faith and credit.
  - Research the ability to upgrade relative placements to foster care status in consideration of the cultural component that is part of most Indian child placements.
- Define “on or near” reservations for the purpose of a service area in which tribes have authority to license foster homes. This should include a determination of whether “trust land” is the same as “reservation.”